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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 NOV 18 P 3:42

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF COMMUNITY WATER COMPANY OF
GREEN VALLEY FOR AUTHORITY TO ISSUE
DEBT UP TO \$2.81 MILLION.

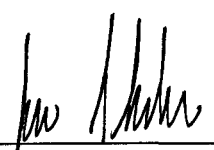
DOCKET NO. W-02304A-09-0153

NOTICE OF FILING

Decision 71259 No. (September 3, 2009) requires Community Water Company of Green Valley ("CWCGV") to file as a compliance item, within 60 days of closing, copies or the loan documents memorializing the authorized transaction. Accordingly, Community Water Company of Green Valley ("CWCGV") submits a Modification Agreement with JPMorgan Chase Bank.

RESPECTFULLY SUBMITTED this 18th day of November, 2009.

By


Jason D. Gellman
ROSHKA DEWULF & PATTEN, PLC.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

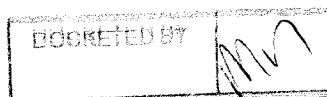
Original and thirteen copies of the foregoing
filed this 18th day of November, 2009, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

NOV 18 2009



ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Copy of the foregoing hand-delivered
2 this 18th day of November, 2009, to:


3 Lyn A. Farmer, Esq.
4 Chief Administrative Law Judge
5 Hearing Division
6 Arizona Corporation Commission
7 1200 West Washington Street
8 Phoenix, Arizona 85007

9 Janice Alward, Esq.
10 Chief Counsel, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Steve Olea
15 Director, Utilities Division
16 Arizona Corporation Commission
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Brian Bozzo
20 Compliance Manager, Utilities Division
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 Arturo R. Gabaldon
25 President
26 Community Water Company of Green Valley
27 1501 South La Canada
Green Valley, AZ 85614-1600

By 

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MODIFICATION AGREEMENT

DATE: November 12, 2009

PARTIES: Borrower: COMMUNITY WATER COMPANY OF GREEN VALLEY, an Arizona non-profit corporation

Borrower 1501 South La Canada Drive
Address: Green Valley, Arizona 85622

Bank: JPMORGAN CHASE BANK, N.A., a national banking association

Bank 1725 E. Skyline Drive
Address: AZ1-0903
Tucson, Arizona 85718

RECITALS:

A. Bank has extended to Borrower a loan ("Loan") in the principal amount of \$500,000.00 pursuant to the Credit Agreement, dated December 5, 2002 (the "Credit Agreement"), between Borrower and Bank One, NA, Bank's predecessor in interest, and evidenced by the Term Note, dated December 5, 2002 ("Note") payable to the order of Bank One, NA, Bank's predecessor in interest.

B. The Loan is secured by, among other things, the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement, dated December 5, 2002 (as amended, the "Deed of Trust"), by Borrower, as trustor, for the benefit of Bank One, NA, Bank's predecessor in interest, as beneficiary, recorded on January 2, 2003, in Docket 11958 at Page 5528, records of Pima County, Arizona, and the Continuing Security Agreement, dated December 5, 2002, (as amended, the "Security Agreement"), by Borrower, as Debtor, for the benefit of Bank One, NA, Bank's predecessor in interest, as Secured Party (the agreements, documents, and instruments securing the Loan and the Note are referred to individually and collectively as the "Security Documents").

C. Bank and Borrower have executed and delivered previously the following agreements ("Modifications") modifying the terms of the Loan, the Note, the Credit Agreement, and/or the Security Documents: Amendment to Credit Agreement, dated May 16, 2005; Line of Credit Note, dated May 16, 2005, in the amount of \$4,000,000.00; Deed of Trust Amendment, dated May 16, 2005; Note Modification Agreement, dated August 9, 2006; Amendment to Credit Agreement, dated November 13, 2008; Line of Credit Note, dated November 13, 2008, in the amount of \$2,810,000.00. (The Note, the Credit Agreement, the Security Documents, any arbitration resolution, any environmental certification and indemnity agreement, and all other agreements, documents, and instruments evidencing, securing, or otherwise relating to the Loan, as modified in the Modifications, are sometimes referred to individually and collectively as the "Loan Documents". Hereinafter, "Note", "Credit Agreement", "Deed of Trust", Credit

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Agreement, and "Security Documents" shall mean such documents as modified in the Modifications.)

D. The unpaid principal of the Loan as of the date hereof is \$2,810,000.00. Borrower has requested that Bank modify the Loan and the Loan Documents as provided herein. Bank is willing to so modify the Loan and the Loan Documents, subject to the terms and conditions herein. The provisions of this Agreement are effective on the date that this Agreement has been executed by all of the signers and delivered to the Bank and the Borrower shall have complied with Section 5.3 hereto (the "Effective Date").

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank agree as follows:

1. **ACCURACY OF RECITALS.**

Borrower acknowledges the accuracy of the Recitals.

2. **MODIFICATION OF LOAN DOCUMENTS.**

2.1 The Loan Documents are modified as follows:

2.1.1 Borrower covenants and agrees that the proceeds of the Loan have and shall be applied solely as permitted in the Order of the Arizona Corporation Commission (the "Commission"), docketed September 3, 2009 in Docket No. W-02304A-09-0153, Decision No. 71259 (the "Order").

2.1.2 From and after the Effective Date of this Agreement, the maturity date of the Loan and the Note is changed from November 15, 2009, to November 15, 2014.

2.1.3 From and after the Effective Date of this Agreement, the unpaid principal balance of the Note shall be converted to a CB Floating Rate Advance effective on the date of this Agreement and shall remain a CB Floating Rate Advance throughout the remaining term of the Loan.

2.1.4 From and after the Effective Date of this Agreement, the definition of "Applicable Margin" contained in the Note is hereby deleted in its entirety and replaced with the following:

"Applicable Margin" means with respect to any CB Floating Rate Advance, 1.00% per annum.

2.1.5 From and after the Effective Date of this Agreement, the paragraph of the Note entitled "Principal Payments" is hereby deleted in its entirety and replaced with the following:

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Principal Payments. Principal of the Loan and the Note shall be due and payable in consecutive monthly installments each in the amount of \$11,708.34, commencing on December 15, 2009, and continuing on the same day of each successive month thereafter until November 15, 2014, the maturity date. On the maturity date Borrower shall pay to Bank the unpaid principal, accrued and unpaid interest, and all other amounts payable by Borrower under the Loan Documents as modified herein. Each date for the payment of principal hereunder is referred to herein as a "Principal Payment Date".

2.1.6 From and after the Effective Date of this Agreement, Section 2 "Definitions" of the Credit Agreement is hereby amended by adding the following defined terms:

- (i) "Maximum Annual Debt Service Requirements" means the maximum aggregate amount of debt service (excluding redemption premiums) due on any debt (including any bonds or any other additional debt) and the Liabilities.
- (ii) "Net Revenues" means the amount of Revenues remaining after payment of Operation and Maintenance Expenses.
- (iii) "Net Pledged Revenues" means the Net Revenues of Borrower arising from the System.
- (iv) "Operation and Maintenance Expenses" means all costs reasonably incurred in connection with the ownership, operation, use and maintenance of Borrower's properties and equipment, including repairs necessary to keep Borrower's properties and equipment in efficient and economical operating condition, payments of premiums for insurance required to be carried on Borrower's properties and equipment, payment of taxes (in any form), the cash repayment of refundable advances, and generally all expenses of Borrower's operations except depreciation and interest expense on the Liabilities and any additional debt.
- (v) "Property Tax Collections" means the ad valorem taxes collected by the Pima County Treasurer on behalf of Borrower from time to time.
- (vi) "Revenues" means and includes all income, moneys, and receipts to be received by Borrower (including any and all development, impact, or similar fees, but excluding any "contributions in aid of construction" [as defined in Section 118(c) of the Internal Revenue Code of 1986]), directly or indirectly, from the ownership, use, or operation of its

properties and equipment, including any waste material or by-products and also including investment income.

- (vii) "System" means the "Premises" as defined in the Deed of Trust and the "Equipment" and "Collateral" as defined in the Security Agreement, as now existing and as they may hereafter be improved or extended while any of the Liabilities remain outstanding, all improvements, additions and extensions thereto or replacements thereof hereafter constructed or acquired by purchase, contract or otherwise and all contracts, rights, agreements, leases and franchises of every nature owned by Borrower and used or useful or held for use in the operation of all or any part or portion thereof.

2.1.7 From and after the Effective Date of this Agreement, Section 4.5 "**Financial Reports**" of the Credit Agreement is hereby deleted in its entirety and replaced with the following:

Financial Reports. Furnish to Bank whatever information, books and records the Bank may reasonably request, including at a minimum:

A. Within sixty (60) days after June 30, 2010, and every June 30th thereafter, a balance sheet as of the end of that period and statements of income, cash flow and retained earnings, from the beginning of that fiscal year to the end of that period, certified as correct by one of its authorized agents.

B. Within one hundred fifty (150) days after and as of the end of each of its fiscal years, a detailed financial statement including a balance sheet and statements of income, cash flow and retained earnings, such financial statement to be audited by an independent certified public accountant of recognized standing acceptable to the Bank in the Bank's sole discretion.

2.1.8 From and after the Effective Date of this Agreement, the provision in the Credit Agreement under Section 5.2 captioned "**B. Debt**" is hereby deleted in its entirety and replaced with the following:

B. Issuance of Additional Indebtedness. Nothing herein prevents the issuance by Borrower of additional indebtedness; but before any such additional indebtedness is authorized or incurred all of the following conditions shall be satisfied and the Borrower shall have provided written certification to the Bank of such satisfaction:

- (i) Absence of Default. At the time of application to the Arizona Corporation Commission and at time of the adoption of the supplemental resolution or other instrument authorizing the issuance of the additional indebtedness,

Borrower shall not be in default under the Loan Documents.

- (ii) Historic Revenues Tests. Except as hereinafter provided in the case of additional indebtedness issued for the purpose of refunding less than all of the Liabilities, the Net Revenues for the last complete fiscal year prior to the issuance of the proposed additional indebtedness, as certified by an authorized officer, must have been equal to at least 130% of the Maximum Annual Debt Service Requirements of the Liabilities then outstanding and the additional indebtedness proposed to be issued. If any increase in water utility fees or other rates, fees, tolls or charges is authorized by the Arizona Corporation Commission and is made by the Borrower during such fiscal year, the calculation of the Net Revenues shall be adjusted to reflect the amount thereof that would have been received if such increase had been in effect throughout such fiscal year. For purposes of this Section, when computing the Maximum Annual Debt Service Requirements for any obligation bearing interest at a variable, adjustable, convertible or other similar rate that is not fixed for the entire term thereof, the rate of interest on such securities shall be assumed to be a rate equal to the average per annum rate of interest on such obligation during the preceding twelve month period, plus 150 basis points. If such obligations have not been outstanding during the preceding twelve month period, the assumed rate of interest on such obligations shall be determined by reference to the preceding 12 month average of an index comparable to that utilized in connection with such obligations, plus 150 basis points. It shall further be assumed that any such obligations which may be tendered prior to maturity for purchase at the option of the holder thereof will mature on their stated maturity dates and not on any tender option date. Borrower shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of obligations if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such obligations. In the case of additional indebtedness issued for the purpose of refunding less than all of the Liabilities compliance with this Section shall not be required so long as the Maximum Annual Debt Service Requirements payable on all Liabilities and other additional indebtedness after the issuance of such additional indebtedness in each year does not exceed the aggregate amount of debt service

payable on all Liabilities prior to the issuance of such additional indebtedness in such year.

2.1.9 From and after the Effective Date of this Agreement, the provision in the Credit Agreement under Section 5.2 captioned "J. **Fixed Charge Coverage Ratio**" is hereby deleted in its entirety and replaced with the following:

J. Debt Service Coverage Ratio. The Borrower shall not permit its ratio of the sum of (a) its Net Revenues, less unrealized gains on investments, less non-cash gains related to any interest rate swap, plus unrealized losses on investments, plus non-cash losses related to any interest rate swap, to the sum of (b) scheduled principal payments on the Liabilities, plus scheduled principal payment on any additional indebtedness plus all interest expense (including any letter of credit fees net of any interest rate swap activity), plus any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Revenues or any Liabilities and additional indebtedness payable therefrom, to be less than (i) 1.20:1.00, measured as of December 31, 2010, or (ii) 1.30:1.00, measured as of December 31, 2011 and December 31st of each year thereafter, in each case based on the Borrower's audited annual financial statements.

2.1.10 From and after the Effective Date of this Agreement, Borrower covenants and agrees with Bank as follows:

A. Establishment of Revenue Fund. Borrower shall establish and maintain with Bank a separate fund known as the "Revenue Fund," which shall be funded and disbursed as provided in this Section. Borrower and Bank acknowledge and agree that the Borrower's existing checking and ACH accounts with Bank collectively constitute the Revenue Fund. Borrower shall deposit all Revenues in the Revenue Fund from time to time as received. Money in the Revenue Fund shall be applied as follows:

- (i) Revenues in amounts necessary to pay the Operation and Maintenance Expenses shall be paid from the Revenue Fund.
- (ii) After making the payments required to be made pursuant to subsection (i), Net Revenues shall be applied to the payment when due of all debt service on the Liabilities, such Net Revenues being pledged to the payment thereof.
- (iii) After making the payments required to be made pursuant to subsections (i) and (ii), Net Revenues shall, if applicable, next be applied to the payment when due of all debt service on any additional indebtedness of Borrower permitted hereunder.

- (iv) After making the payments required to be made pursuant to subsections (i), (ii) and (iii), all remaining Net Revenues may be used by Borrower for any other corporate purpose.

B. Collateral.

- (i) As security for all Liabilities of Borrower to Bank under the Loan Documents, Borrower hereby, to the extent not otherwise prohibited by applicable law from agreeing so, grants to Bank a security interest and pledge of a first priority in the Net Pledged Revenues in the Revenue Fund and all Borrower's Net Pledged Revenues, all accounts, deposit accounts (except security deposits of customers), chattel paper, instruments, documents, accounts receivable and general intangibles, now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies and other agreements pertaining to the same or the property described therein, together with whatever is receivable or received when any of the Collateral described herein or proceeds thereof are sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all rights to payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all rights to payment with respect to any cause of action affecting or relating to any of the foregoing, excluding, however, all security deposits of customers and all Property Tax Collections (herein called the "Collateral"). Borrower agrees, to the extent not otherwise prohibited by applicable law from agreeing so, to execute such pledge and security documents as Bank may require from time to time in order to evidence such security interest in the Collateral. The security interest in and pledge of the Collateral under this Agreement shall be in addition to the liens on and security interests in the System granted by Borrower to Bank pursuant to the Deed of Trust and Security Agreement.
- (ii) Borrower agrees, to the extent not otherwise prohibited by applicable law from agreeing so, that all of the foregoing Collateral shall be evidenced by and subject to the terms of such security agreements, financing statements, and other documents as Bank shall reasonably require, all in form and

substance satisfactory to Bank. Borrower shall reimburse Bank immediately upon demand for all costs and expenses incurred by Bank in connection with any of the foregoing security, including without limitation, filing fees.

2.1.11 From and after the Effective Date of this Agreement, Borrower covenants and agrees with Bank as follows:

A. **Rate Maintenance.** Borrower shall prescribe, revise and collect water utility fees and any other rates, fees, tolls and charges that shall produce Net Revenues sufficient, together with any other moneys legally available therefore, to make the payments and accumulations required by this Agreement and that shall provide sufficiency to cover at least 130% of the combined Maximum Annual Debt Service Requirements for all Liabilities and additional indebtedness of the Borrower during such fiscal year plus any amounts required to meet then existing deficiencies pertaining to any fund or account relating to the Revenues or any Liabilities and additional indebtedness payable therefrom. Borrower shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Liabilities or additional indebtedness if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Liabilities or additional indebtedness. In the event that the Revenues at any time should not be sufficient to make all of the payments and accumulations required by this Agreement, Borrower shall immediately appeal to the Arizona Corporation Commission to increase its water utility fees and any other rates, fees, tolls and charges to such extent necessary as to insure the payments and accumulations required by the provisions of this Agreement.

B. **Collection of Charges.** Borrower shall cause all Revenues to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Net Revenues shall be adequate to meet the requirements of this Agreement, or any instrument supplemental thereto. The Revenues shall be collected in any lawful manner.

2.2 Each of the Loan Documents is modified to provide that it shall be a default or an event of default thereunder if Borrower shall fail to comply with any of the covenants of Borrower herein or if any representation or warranty by Borrower herein is materially incomplete, incorrect, or misleading as of the date hereof.

2.3 Each reference in the Loan Documents to any of the Loan Documents shall be a reference to such document as modified herein.

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3. RATIFICATION OF LOAN DOCUMENTS AND COLLATERAL.

The Loan Documents are ratified and affirmed by Borrower and shall remain in full force and effect as modified herein. Any property or rights to or interests in property granted as security in the Loan Documents shall remain as security for the Loan and the obligations of Borrower in the Loan Documents.

4. BORROWER REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Bank:

4.1 No default or event of default under any of the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both, would be a default or an event of default under the Loan Documents as modified herein has occurred and is continuing.

4.2 There has been no material adverse change in the financial condition of Borrower or any other person whose financial statement has been delivered to Bank in connection with the Loan from the most recent financial statement received by Bank.

4.3 Each and all representations and warranties of Borrower in the Loan Documents are accurate on the date hereof.

4.4 Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

4.5 The Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

4.6 Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by the Arizona Corporation Commission and all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. BORROWER COVENANTS.

Borrower covenants with Bank:

5.1 Borrower shall execute, deliver, and provide to Bank such additional agreements, documents, and instruments as reasonably required by Bank to effectuate the intent of this Agreement.

5.2 Borrower fully, finally, and forever releases and discharges Bank and its successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that Borrower has or in the future may have, whether known or

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unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Bank in respect of the Loan or the Loan Documents and (ii) arising from events occurring prior to the date of this Agreement.

5.3 Contemporaneously with the execution and delivery of this Agreement, Borrower has paid to Bank:

5.3.1 All accrued and unpaid interest under the Note and all amounts, other than interest and principal, due and payable by Borrower under the Loan Documents as of the date hereof.

5.3.2 All of the internal and external costs and expenses incurred by Bank in connection with this Agreement (including, without limitation, inside and outside attorneys, appraisal, appraisal review, processing, title, filing, recording and any other costs, expenses, and fees).

5.3.3 Bank's outside counsel fees and expenses in the amount of \$10,950.00.

6. EXECUTION AND DELIVERY OF AGREEMENT BY BANK.

Bank shall not be bound by this Agreement until each of the following shall have occurred: (i) Bank has executed and delivered this Agreement, (ii) Borrower has performed all of the obligations of Borrower under this Agreement to be performed contemporaneously with the execution and delivery of this Agreement, and (iii) if required by Bank, Borrower and any guarantor(s) have executed and delivered to Bank any other instruments and agreements to give effect to the transactions contemplated by this Agreement.

7. ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

The Loan Documents as modified herein contain the entire understanding and agreement of Borrower and Bank in respect of the Loan and supersede all prior representations, warranties, agreements, arrangements, and understandings. No provision of the Loan Documents as modified herein may be changed, discharged, supplemented, terminated, or waived except in a writing signed by Bank and Borrower.

8. BINDING EFFECT.

The Loan Documents as modified herein shall be binding upon, and inure to the benefit of, Borrower and Bank and their respective successors and assigns.

9. CHOICE OF LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to conflicts of law principles.

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10. COUNTERPART EXECUTION.


This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[SIGNATURE PAGE FOLLOWS.]

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DATED as of the date first above stated.

COMMUNITY WATER COMPANY OF GREEN
VALLEY, an Arizona non-profit corporation

By: 
Name: Arturo Grabaldon
Title: President


"BORROWER"

COMMUNITY WATER COMPANY OF GREEN
VALLEY, an Arizona non-profit corporation

By: 
Name: Virgil W. Davis
Title: Secretary of the Corporation

"BORROWER"

JPMORGAN CHASE BANK, N.A., a national
banking association

By: 
Name: EDMUNDO H. GAMILLO
Title: VICE PRESIDENT

"BANK"